

**North Carolina Medical Board
Policy Committee Meeting
Wednesday, March 17, 2010**

Committee Members: Dr. Walker, Judge Lewis, Dr. Camnitz and Dr. Loomis

I. NEW BUSINESS:

A. Position Statement Review

Issue: In November 2009, the Board approved the Policy Committee's recommendation to review Position Statements at least once every four years. A review schedule has been formulated for the Committee's consideration.

Position Statements for review:

1. Unethical agreements in complaint settlements
2. Professional obligation to report incompetence, impairment and unethical

II. Old Business:

A. Telemedicine

Issue: The Board to consider recent adoptions of telemedicine policies and statements by the Federation, Blue Cross Blue Shield and the AMA.

B. Board Certification Distinction

Issue: Rule hearing held on November 30, 2009 to receive comments.

NEW BUSINESS:

I. A. POSITION STATEMENT REVIEW

1/2010 COMMITTEE RECOMMENDATION: (Loomis/Camnitz) Adopt a 4 year review schedule as presented. All reviews will be offered to the full Board for input. Additionally all reviews will be documented and will be reported to the full Board, even if no changes are made.

1/2010 BOARD ACTION: Adopt the recommendation of the Policy Committee.

POSITION STATEMENT	ADOPTED	SCHEDULED FOR REVIEW	LAST REVISED/ REVIEWED/ ADOPTED	REVISED/ REVIEWED	REVISED/ REVIEWED	REVISED/ REVIEWED	REVISED/ REVIEWED
Unethical Agreements in Complaint Settlements	Nov-93	Mar-10	May-96				
Professional Obligation to Report Incompetence, Impairment, and Unethical Conduct	Nov-98	Mar-10	Nov-98				
Medical, Nursing, Pharmacy Boards: Joint Statement on Pain Management in End-of-Life Care	Oct-99		Oct-99				
What Are the Position Statements of the Board and To Whom Do They Apply?	Nov-99		Nov-99				
Contact With Patients Before Prescribing	Nov-99		Feb-01				
Guidelines for Avoiding Misunderstandings During Physical Examinations	May-91		Oct-02	Feb-01	Jan-01	May-96	May-93
Office-Based Procedures	Sep-00		Jan-03				
Access to Physician Records	Nov-93		Aug-03	Mar-02	Sep-97	May-96	
Medical Supervisor-Trainee Relationship	Apr-04		Apr-04				
The Treatment of Obesity	Oct-87		Jan-05	Mar-96			
HIV/HBV Infected Health Care Workers	Nov-92		Jan-05	May-96			

Writing of Prescriptions	May-91		Mar-05	Jul-02	Mar-02	May-96	Sep-92
Laser Surgery	Jul-99		Jul-05	Aug-02	Mar-02	Jan-00	
Self- Treatment and Treatment of Family Members and Others With Whom Significant Emotional Relationships Exist	May-91		Sep-05	Mar-02	May-00	May-96	
Advertising and Publicity	Nov-99		Sep-05	Mar-01			
Prescribing Legend or Controlled Substances for Other Than Valid Medical or Therapeutic Purposes, with Particular Reference to Substances or Preparations with Anabolic Properties	May-98		Nov-05	Jan-01	Jul-98		
Sale of Goods From Physician Offices	Mar-01		Mar-06				
Competence and Reentry to the Active Practice of Medicine	Jul-06		Jul-06				
Availability of Physicians to Their Patients	Jul-93		Jul-06	Oct-03	Jan-01	May-96	
Referral Fees and Fee Splitting	Nov-93		Jul-06	May-96			
Sexual Exploitation of Patients	May-91		Sep-06	Jan-01	Apr-96		
Care of the Patient Undergoing Surgery or Other Invasive Procedure	Sep-91		Sep-06	Mar-01			
The Physician-Patient Relationship	Jul-95		Sep-06	Aug-03	Mar-02	Jan-00	Jul-98
The Retired Physician	Jan-97		Sep-06				
Physician Supervision of Other Licensed Health Care Practitioners	Jul-07		Jul-07				
Medical Testimony	Mar-08		Mar-08				
Advance Directives and	Jul-93		Mar-08	May-96			

Patient Autonomy							
End-of-Life Responsibilities and Palliative Care	Oct-99		Mar-08	May-07			
Drug Overdose Prevention	Sep-08		Sep-08				
Policy for the Use of Controlled Substances for the Treatment of Pain	Sep-96		Sep-08	Jul-05			
Medical Record Documentation	May-94		May-09	May-96			
Retention of Medical Records	May-98		May-09				
Capital Punishment	Jan-07		Jul-09				
Departures from or Closings of Medical	Jan-00		Jul-09	Aug-03			

Unethical agreements in complaint settlements

It is the position of the North Carolina Medical Board that it is unethical for a physician to settle any complaint if the settlement contains an agreement by a patient not to complain or provide information to the Board.

(Adopted November 1993) (Amended May 1996)

Professional obligation to report incompetence, impairment and unethical

It is the position of the North Carolina Medical Board that physicians have a professional obligation to act when confronted with an impaired or incompetent colleague or one who has engaged in unethical conduct.

When appropriate, an offer of personal assistance to the colleague may be the most compassionate and effective intervention. When this would not be appropriate or sufficient to address the problem, physicians have a duty to report the matter to the institution best positioned to deal with the problem. For example, impaired physicians and physician assistants should be reported to the North Carolina Physicians Health Program. Incompetent physicians should be reported to the clinical authority empowered to take appropriate action. Physicians also may report to the North Carolina Medical Board, and when there is no other institution reasonably likely to be able to deal with the problem, this will be the only way of discharging the duty to report.

This duty is subordinate to the duty to maintain patient confidences. In other words, when the colleague is a patient or when matters concerning a colleague are brought to the physician's attention by a patient, the physician must give appropriate consideration to preserving the patient's confidences in deciding whether to report the colleague.

(Adopted November 1998)

OLD BUSINESS:

II. A. TELEMEDICINE

Issue: The Board to consider recent adoptions of telemedicine policies and statements by the Federation, Blue Cross Blue Shield and the AMA.

5/2009 COMMITTEE DISCUSSION: Dr. Rhyne reported that the Federation recently adopted a statement regarding telemedicine. It was also reported that BCBS would be implementing a new e-medicine policy.

5/2009 BOARD ACTION: Mr. Brosius to use information from AMA, Federation, Medical Society and BCBS, to begin working on a comprehensive policy. This policy should include the telepsychiatry issue the Committee addressed last year.

7/2009 COMMITTEE DISCUSSION: Dr. Rhyne reported that the AMA recently passed a policy regarding telemedicine and that Blue Cross Blue Shield may have also taken a position regarding this issue.

7/2009 COMMITTEE RECOMMENDATION: Mr. Brosius is to continue to research this issue. The Committee will report its findings at the September meeting.

7/2009 BOARD ACTION: No action required.

9/2009 COMMITTEE DISCUSSION: Mr. Brosius presented the following proposed Position Statement. Comments were solicited from DHHS and their recommendations were considered and incorporated where the Policy Committee deemed appropriate.

9/2009 COMMITTEE RECOMMENDATION: Present proposed Position Statement to the full Board for consideration. This issue will be revisited at the November 2009 meeting.

9/2009 BOARD ACTION: Have proposed Position Statement published in Forum for comments before final adoption by Board.

11/2009 COMMITTEE RECOMMENDATION: Continue to collect comments. Position Statement and comments will be considered at the January 2010 meeting.

11/2009 BOARD ACTION: Continue to collect comments. Position Statement and comments will be considered at the January 2010 meeting.

1/2010 COMMITTEE DISCUSSION: Comments received are on file and were provided for the Committee's review. The Committee discussed the need for informed consent. It was the consensus of the Committee that the proposed Position Statement should not be changed.

1/2010 COMMITTEE RECOMMENDATION: (Loomis/Camnitz) Approve proposed Position Statement. Present to full Board for approval.

1/2010 BOARD ACTION: After a full Board discussion, the Board voted to table this issue until the staff could obtain additional information regarding informed consent.

Telemedicine

“Telemedicine” is the practice of medicine using electronic communication, information technology or other means between a physician in one location and a patient in another location with or without an intervening health care provider.

The Board recognizes that technological advances have made it possible for physicians to provide medical care to patients who are separated by some geographical distance. As a result, telemedicine is a potentially useful tool that, if employed appropriately, can provide important benefits to patients, including: increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and the reduced cost of patient care.

The Board cautions, however, that physicians practicing via telemedicine will be held to the same standard of care as physicians employing more traditional in-person medical care. A failure to conform to the appropriate standard of care, whether that care is rendered in-person or via telemedicine, may subject the physician to potential discipline by this Board.

The Board provides the following considerations to its licensees as guidance in providing medical services via telemedicine:

Training of Staff -- Staff involved in the telemedicine visit should be trained in the use of the telemedicine equipment and competent in its operation.

Examinations -- Physicians using telemedicine technologies to provide care to patients located in North Carolina must provide an appropriate examination prior to diagnosing and/or treating the patient. However, this examination need not be in-person if the technology is sufficient to provide the same information to the physician as if the exam had been performed face-to-face.

Other examinations may also be considered appropriate if the physician is at a distance from the patient, but a licensed health care professional is able to provide various physical findings that the physician needs to complete an adequate assessment. On the other hand, a simple questionnaire without an appropriate examination may be a violation of law and/or subject the physician to discipline by the Board.¹

Informed Consent -- The physician using telemedicine should obtain the patient’s informed consent before providing care via telemedicine services. In addition to information relative to treatment, the patient should be informed of the risks and benefits of being treated via telemedicine, including how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. The patient retains the right to withdraw his or her consent at any time.

Physician-Patient Relationship – The physician using telemedicine should have some means of verifying that the person seeking treatment is in fact who he or she claims to be. A diagnosis should be established through the use of accepted medical practices, i.e., a patient history, mental status examination, physical examination and appropriate diagnostic and laboratory testing. Physicians using telemedicine should also ensure the availability for appropriate follow-

¹ See also the Board’s Position Statement entitled “Contact with Patients before Prescribing.”

up care and maintain a complete medical record that is available to the patient and other treating health care providers.

Medical Records -- The physician treating a patient via telemedicine must maintain a complete record of the telemedicine patient's care according to prevailing medical record standards. The medical record serves to document the analysis and plan of an episode of care for future reference. It must reflect an appropriate evaluation of the patient's presenting symptoms, and relevant components of the electronic professional interaction must be documented as with any other encounter.

The physician must maintain the record's confidentiality and disclose the records to the patient consistent with state and federal law. If the patient has a primary physician and a telemedicine physician for the same ailment, then the primary physician's medical record and the telemedicine physician's record constitute one complete patient record.

Licensure -- The practice of medicine is deemed to occur in the state in which the patient is located. Therefore, any physician using telemedicine to regularly provide medical services to patients located in North Carolina should be licensed to practice medicine in North Carolina.² Physicians need not reside in North Carolina, as long as they have a valid, current North Carolina license.

North Carolina physicians intending to practice medicine via telemedicine technology to treat or diagnose patients outside of North Carolina should check with other state licensing boards. Most states require physicians to be licensed, and some have enacted limitations to telemedicine practice or require or offer a special registration. A directory of all U.S. medical boards may be accessed at the Federation of State Medical Boards Web site: http://www.fsmb.org/directory_smb.html.

Fees – The Board's licensees should be aware that third-party payors may have differing requirements and definitions of telemedicine for the purpose of reimbursement.

² N.C. Gen. Stat. § 90-18(c)(11) exempts from the requirement for licensure: "The practice of medicine or surgery by any nonregistered reputable physician or surgeon who comes into this State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State."

The Board also notes that the North Carolina General Statutes define the practice of medicine as including, "The performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone." N.C. Gen. Stat. § 90-1.1(5)f.

Board Comment:

During the Board's consideration of this position statement, several radiology groups contacted the Board to voice concern about the section entitled "Informed Consent." They were concerned that this position statement would require them to obtain an additional informed consent from patients when in the past they had traditionally relied on the informed consent obtained by the hospital or physician requesting the interpretation. The Board does not intend to create such an additional requirement. In the event that radiologists or other specialists have traditionally relied on the informed consent obtained by another provider, the Board believes that such informed consent should remain sufficient. The Board does caution however that physicians relying on such informed consent and hospitals obtaining such informed consent may want to review such informed consents to ensure that they include the possibility that the patient's diagnosis or treatment may be obtained by means of electronic communication, information technology or other means.

II. B. BOARD CERTIFICATION DISTINCTION

7/2009 BOARD ACTION: Approve proposed rule. Proceed with rule-making process.

9/2009 COMMITTEE DISCUSSION: It was reported that the following rule has been submitted to the Office of Administrative Hearings to be published in the NC Register. A public hearing for the purpose of collecting any comments will be held at the Board's office on November 30, 2009 at 11:00 am. The proposed rule will be submitted to the Board at its December meeting for adoption.

9/2009 BOARD ACTION: Accept as information.

11/2009 COMMITTEE DISCUSSION: It was reported that the following rule has been submitted to the Office of Administrative Hearings and was published in the NC Register. A public hearing for the purpose of collecting any comments will be held at the Board's office on November 30, 2009 at 11:00 am. The Board continues to receive comments. The proposed rule and comments collected will be presented to the Board at its January 2010 meeting for consideration.

11/2009 COMMITTEE RECOMMENDATION: No action necessary.

11/2009 BOARD ACTION: No action necessary.

1/2010 COMMITTEE DISCUSSION: A public hearing was held on November 30, 2009, for the purpose of receiving comments regarding the proposed rule. A taskforce is currently being assembled to further research and consider this issue. No action is necessary at this time.

1/2010 COMMITTEE RECOMMENDATION: For information only. No action necessary at this time.

1/2010 BOARD ACTION: Dr. Jablonski is to appoint a taskforce to further research and consider this issue.

21 NCAC 32Y .0101 is proposed for adoption as follows:

Subchapter 32Y – SPECIALTY AND BOARD CERTIFICATION ADVERTISING

21 NCAC 32Y .0101 ADVERTISING OF SPECIALTY AND BOARD CERTIFICATION

(a) No physician shall advertise or otherwise hold himself or herself out to the public as being “Board Certified” without proof of current certification by a specialty board approved by (1) the American Board of Medical Specialties; (2) the Bureau of Osteopathic Specialists of American Osteopathic Association; (3) the Royal College of Physicians and Surgeons of Canada; (4) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty; or (5) a board or association with equivalent requirements approved by the North Carolina Medical Board.

(b) Any physicians advertising or otherwise holding himself or herself out to the public as “Board Certified” as contemplated in paragraph (a) shall disclose in the advertisement the specialty board by which the physician was certified.

(c) Physicians shall not list their names under a specific specialty in advertisements, including but not limited to, classified telephone directories and other directories unless: (1) they are board certified as defined in paragraph (a); or (2) they have successfully completed a training program in the advertised specialty that is accredited by the Accreditation Council for Graduate Medical Education or approved by the Council on Postdoctoral Training of the American Osteopathic Association.

History Note: Authority G.S.90-5.1, 90-5.2, 90-14.